

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 17**

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO, DISTRICT 70 AND LOCAL LODGE 839
(Spirit Aerosystems)**

Case 14-CB-133028

and

RYAN KASTENS, an Individual

and

SPIRIT AEROSYSTEMS

**COUNSEL FOR THE GENERAL COUNSEL'S PETITION
TO PARTIALLY REVOKE RESPONDENT'S SUBPOENAS DUCES TECUM**

Counsel for the General Counsel ("General Counsel") of the National Labor Relations Board files this petition to partially revoke two subpoenas duces tecum issued by Respondent to two discriminatees in the instant proceeding. Specifically, on February 3 and 4, 2015, respectively, Respondent issued Subpoena No. B-1-L0U6AT to Jarrod Lehman (Lehman's Subpoena) and Subpoena No. B-1-L0U4ZL to Ryan Kastens (Kastens' Subpoena). Copies of Lehman's Subpoena and Kastens' Subpoena are attached hereto as Exhibit 1 and Exhibit 2. The General Counsel respectfully requests that portions of these subpoenas be revoked because they are overly broad and seek information that is irrelevant to this proceeding. If not revoked, these subpoenas would require litigation of irrelevant issues.

I. Issues In Dispute

Paragraph 5 of the Complaint alleges that, about January 27, 2014, Respondent violated Sections 8(b)(1)(A) and 8(b)(2) by attempting to cause and causing Spirit Aerosystems, Inc. (Employer) to discharge Ryan Kastens and Jarrod Lehman because of their dissident union activity. Paragraph 6 alleges that, on or about April 11, 2014, Respondent, by agent Howard Johnson, threatened employees with bodily injury and threatened to discriminatorily process employees' grievances because they

engaged in dissident union activity in violation of Section 8(b)(1)(A). Paragraph 7 alleges that since May 23, 2015, Respondent has refused to process to arbitration grievances concerning Ryan Kastens' suspensions and discharge because of Kastens' dissident union activity and/or processed Kastens' grievances in a perfunctory and arbitrary manner.

II. The Legal Framework

Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, authorizes an administrative law judge to revoke a subpoena in those circumstances in which “the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” The Board has observed that the Board’s Rules and Regulations afford an administrative law judge considerable discretion to “regulate the course of the hearing” to limit the record to issues that are reasonably anticipated to produce probative evidence. See, e.g., *Parts Depot, Inc.*, 348 NLRB No. 9, slip op. at 1, fn. 6 (2006).

III. Respondent’s Request for Certain Documents Seeks the Production of Irrelevant Documents

Lehman’s Subpoena and Kastens’ Subpoena provide that the applicable period for production of documents is from November 1, 2013, until present. Paragraph 5 of each subpoena seeks Lehman and Kastens to produce their communications with the Union, defined as “International Association of Machinists and Aerospace Workers, AFL-CIO District 70 and Local Lodge 839 and their agents, officers, representatives, stewards, employees, staff and administration.” Paragraph 6 of each subpoena seeks the production of “all text messages, emails, and other communications between you and another Union official.” Paragraph 7 of each subpoena seeks the production of all communications between Kastens and Lehman. Paragraph 8 of each subpoena seeks the production

of Lehman's and Kastens' communications with the Employer about their performance, conduct, discipline, or termination.

The Complaint does not allege that Respondent violated the Act based on any conduct that occurred after Respondent notified Kastens that it did not intend to process his grievance to arbitration on or about May 23, 2014. Respondent's conduct alleged to have attempted to cause and caused the Employer to discharge Kastens and Lehman occurred on or about January 27, 2014, and the statements alleged to violate Section 8(b)(1)(A) occurred on or about April 11, 2014. Accordingly, to the extent that paragraphs 5, 6, 7, and 8 seek documents created after May 23, 2014, they require the production of documents that are not relevant to the complaint allegations or any relevant defenses that Respondent may assert. Kastens and Lehman should not be required to produce any evidence requested by paragraphs 5, 6, 7, and 8 beyond May 23, 2014. See *Smitty's Supermarkets, Inc.*, 310 NLRB 1377, 1378 (1993) (finding an abuse of discretion based on failure to grant a petition to revoke where the evidence sought did not pertain to an issue in dispute).

WHEREFORE, for the reasons set forth herein, the undersigned hereby respectfully requests that paragraphs 5, 6, 7, and 8 of the Subpoenas Duces Tecum attached hereto be revoked to the extent that they seek documents, communications, or other evidence beyond May 23, 2014.

Respectfully submitted,

Dated: February 9, 2015

/s/ Michael Werner

Michael E. Werner
Counsel for the General Counsel
National Labor Relations Board
Subregion 17
8600 Farley Street, Suite 100
Overland Park, Kansas 66212-4677

STATEMENT OF SERVICE

I hereby certify that I have this date served copies of the foregoing Petition to Partially Revoke Respondent's Subpoenas Duces Tecum pursuant to the National Labor Relations Board's Rules and Regulations 102.114(i) by electronically filing with the Division of Judges with service by electronic mail on the parties identified below.

Dated: February 9, 2015

/s/ Michael Werner

Michael E. Werner
Counsel for the General Counsel

Counsel for Respondent:

Rod Tanner
rtanner@rodtannerlaw.com

Matt Pierce
mpierce@rodtannerlaw.com

Charging Party

Ryan Kastens
ryankastens@gmail.com

FORM NLRB-31

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Jarrold Lehman, 202 Saint James Place, Midlothian, Texas 76065-6707As requested by Matt Pierce, Associate AttorneyTanner and Associates, P. C.whose address is 6300 Ridglea Place, Suite 407 Fort Worth Texas 76116-5706
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judgeof the National Labor Relations Boardat Wichita Federal Courthouse, Bankruptcy Courtroom, 401 N Marketin the City of WICHITA, KSon Thursday, February 19, 2015 at 9:00 AM or any adjournedInternational Association of Machinists and Aerospace Workers, AFL-CIO
District 70 and Local Lodge 839 (Spirit AeroSystems)or rescheduled date to testify in 14-CB-133028

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE EXHIBIT 1.

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.68(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B-1-L0U6ATIssued at Overland Park, KSDated: February 2, 2015

 A handwritten signature in dark ink, appearing to read "Paul H. Rame".

Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT 1**Definitions and Instructions**

1. The terms "Lehman," "you" and "your" refer to Jarrod Lehman.
2. The term "Kastens" refers to Charging Party Ryan Kastens.
3. The terms "Respondents" and "Union" refer to Respondents International Association of Machinists and Aerospace Workers, AFL-CIO District 70 and Local Lodge 839 and their agents, officers, representatives, stewards, employees, staff and administration.
4. The terms "Employer" and "Spirit" refer to Spirit Aerosystems, Inc. and any predecessor employer of Spirit Aerosystems, Inc.
5. The term "person" means any natural person, partnership, association, joint venture, corporation, governmental agency, or any other organization or legal business entity, including any party to these proceedings.
6. The terms "document" or "documents" as used herein mean and include any written, graphic, computer, or magnetically stored matter or communication, however produced, reproduced or stored, and is intended to be comprehensive and include any and all agreements, records, correspondence, letters, telegrams, notes, memoranda, instructions, reports, financial statements, data, schedules, notices, work papers, drafts, recordings, photographs, charts, analyses, inter-office communications, notebooks, diaries, daily logs, appointment calendars, sketches, drawings, video tapes, films, plans, specifications, blueprints, plats, diagrams, forms, manuals, brochures, lists, publications, minutes of meetings, journals, ledgers, or other financial records, invoices, work tickets, purchase orders, canceled checks, policies, procedures, protocols, regulations, and all other written or graphic materials of any nature whatsoever.
7. Unless otherwise stated in a particular request, a request for "documents" should be construed as also asking for electronically stored information and as seeking production of the electronic information in both electronic and hard copy formats. All information available on magnetic medium should be provided on compact disk, USB flash drive or via email, in the document's native form. Further, each document should be accompanied by a paper copy of the data or text contained within the electronic file.
8. The phrase "all documents" is meant to include each and every non-identical copy of the particular item requested, but the phrase is not meant to include documents protected from disclosure by the attorney-client communications privilege or the attorney work product doctrine.
9. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary in order to encompass the broadest possible request consistent with the Texas Rules of Civil Procedure.
10. In the event that any document requested to be identified or produced has been

destroyed or otherwise disposed of since its preparation or receipt, set forth the author, addressee, date, number of pages, attachments, or appendices, all persons to whom the document was distributed, a general description of the document, and the present custodian.

11. Unless otherwise specified, the time period for these requests is from November 1, 2013 to the present.

12. The term "communication" shall mean and include any transmission or exchange of information between two or more persons, whether orally or in writing, including without limitation any conversation or discussion face-to-face or by means of letter, note, memorandum, telephone, telex, telecopier, cable, email, text message, instant message, voicemail or other audio recording, or any other electronic or other medium, including those made through social media websites and/or applications such as Facebook or Twitter, and whether by chance or prearranged, formal or informal.

13. The term "draft" shall mean any earlier, preliminary, preparatory or tentative version of all or part of a document, whether such draft was superseded by a later draft, and whether the terms of the draft are the same as or different from the terms of the final document.

14. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

15. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.

16. This subpoena applies to all documents in your possession, custody or control.

17. These requests shall be continuing to the time of hearing in that amended or supplemental answers should be provided if additional or different information becomes known to the subpoenaed party.

18. Please segregate and identify all documents produced according to the specific request to which they are responsive.

Documents to be Produced

1. Documents describing, constituting or memorializing any disciplinary action taken against you by the Employer since the beginning of your employment with the Employer, including any warnings, reprimands, write-ups, notices of suspension, or notices of termination.
2. Documents describing, constituting or memorializing any agreement, settlement or other document between you and the Employer relating to the resolution of any disciplinary action taken against you by the Employer, including any "last-chance" provision provided by the Employer.
3. Any grievance filed by or on behalf of you against the Employer, and any documents you provided to the Union or the Employer relating to the grievance(s).
4. Documents describing, constituting or memorializing the settlement of any grievance filed by or on behalf of you against the Employer, including specifically any documents relating to the settlement of your termination grievance and any compensation you received in relation to that settlement.
5. For the period covered by this subpoena, documents describing, constituting or memorializing all communications between you and the Union.
6. For the period covered by this subpoena, all text messages, emails and other communications between you and Frank Molina, or between you and another Union official.
7. For the period covered by this subpoena, documents describing, constituting or memorializing all communications between you and Ryan Kastens.
8. For the period covered by this subpoena, documents describing, constituting or memorializing all communications between you and the Employer relating to your work performance, conduct, discipline or termination.
9. Documents describing, constituting or memorializing all communications between you and any other person relating to the automobile collision captured on video by the Employer on December 26, 2013, including specifically any email, Facebook message, post or comment, or other electronic communication sent by or received by you which attached, embedded or otherwise disseminated video footage of the collision.

Case 14-CB-133028

B-1-L0U6AT

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- ☐ by person
☐ by certified mail
☐ by registered mail
☐ by telegraph
☒ by leaving copy at principal office or place of business at

(Check method used.)

Greg Lehman
202 Saint James Place
Midlothian, TX 76065

on the named person on

February 3, 2015

(Month, day and year)

Kyle Bowers

(Name of person making service)

Process Server

(Official title, if any)

Fee to Serve \$75.00

Witness Fee Tendered \$40.00 cash

CERTIFICATION OF SERVICE

I certify that named person was in attendance as a witness at

3308 Preston Rd Ste 350, Plano TX 75093

on

(Month, day or days, and year)

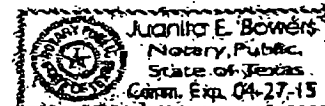
02/03/2015

(Name of person certifying)

Juanita Bowers

Notary

(Official title)



FORM NLRB-31

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Ryan Kastens, 1500 E Tall Tree Road, Apt. 35105, Derby, Kansas 67037-6035As requested by Matt Pierce Associate AttorneyTanner and Associates, P. C.

whose address is	<u>6300 Ridglea Place, Suite 407</u>	<u>Fort Worth</u>	<u>Texas</u>	<u>76116-5706</u>
	(Street)	(City)	(State)	(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judgeof the National Labor Relations Boardat Wichita Federal Courthouse, Bankruptcy Courtroom, 401 N Marketin the City of WICHITA, KSon Thursday, February 19, 2015at 9:00 AM

or any adjourned

International Association of Machinists and Aerospace Workers, AFL-CIO
District 70 and Local Lodge 839 (Spirit AeroSystems)or rescheduled date to testify in 14-CB-133028

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE EXHIBIT 1.

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-L0U4ZL

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Overland Park, KSDated: February 2, 2015

Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT 1**Definitions and Instructions**

1. The terms "Kastens," "you" and "your" refer to Charging Party Ryan Kastens.
2. The terms "Respondents" and "Union" refer to Respondents International Association of Machinists and Aerospace Workers, AFL-CIO District 70 and Local Lodge 839 and their agents, officers, representatives, stewards, employees, staff and administration.
3. The terms "Employer" and "Spirit" refer to Spirit Aerosystems, Inc. and any predecessor employer of Spirit Aerosystems, Inc.
4. The term "person" means any natural person, partnership, association, joint venture, corporation, governmental agency, or any other organization or legal business entity, including any party to these proceedings.
5. The terms "document" or "documents" as used herein mean and include any written, graphic, computer, or magnetically stored matter or communication, however produced, reproduced or stored, and is intended to be comprehensive and include any and all agreements, records, correspondence, letters, telegrams, notes, memoranda, instructions, reports, financial statements, data, schedules, notices, work papers, drafts, recordings, photographs, charts, analyses, inter-office communications, notebooks, diaries, daily logs, appointment calendars, sketches, drawings, video tapes, films, plans, specifications, blueprints, plats, diagrams, forms, manuals, brochures, lists, publications, minutes of meetings, journals, ledgers, or other financial records, invoices, work tickets, purchase orders, canceled checks, policies, procedures, protocols, regulations, and all other written or graphic materials of any nature whatsoever.
6. Unless otherwise stated in a particular request, a request for "documents" should be construed as also asking for electronically stored information and as seeking production of the electronic information in both electronic and hard copy formats. All information available on magnetic medium should be provided on compact disk, USB flash drive or via email, in the document's native form. Further, each document should be accompanied by a paper copy of the data or text contained within the electronic file.
7. The phrase "all documents" is meant to include each and every non-identical copy of the particular item requested, but the phrase is not meant to include documents protected from disclosure by the attorney-client communications privilege or the attorney work product doctrine.
8. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary in order to encompass the broadest possible request consistent with the Texas Rules of Civil Procedure.
9. In the event that any document requested to be identified or produced has been destroyed or otherwise disposed of since its preparation or receipt, set forth the author, addressee, date, number of pages, attachments, or appendices, all persons to whom the document

was distributed, a general description of the document, and the present custodian.

10. Unless otherwise specified, the time period for these requests is from November 1, 2013 to the present.

11. The term "communication" shall mean and include any transmission or exchange of information between two or more persons, whether orally or in writing, including without limitation any conversation or discussion face-to-face or by means of letter, note, memorandum, telephone, telex, telecopier, cable, email, text message, instant message, voicemail or other audio recording, or any other electronic or other medium, including those made through social media websites and/or applications such as Facebook or Twitter, and whether by chance or prearranged, formal or informal.

12. The term "draft" shall mean any earlier, preliminary, preparatory or tentative version of all or part of a document, whether such draft was superseded by a later draft, and whether the terms of the draft are the same as or different from the terms of the final document.

13. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

14. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.

15. This subpoena applies to all documents in your possession, custody or control.

16. These requests shall be continuing to the time of hearing in that amended or supplemental answers should be provided if additional or different information becomes known to the subpoenaed party.

17. Please segregate and identify all documents produced according to the specific request to which they are responsive.

Documents to be Produced

1. Documents describing, constituting or memorializing any disciplinary action taken against you by the Employer since the beginning of your employment with the Employer, including any warnings, reprimands, write-ups, notices of suspension, or notices of termination.
2. Documents describing, constituting or memorializing any agreement, settlement or other document between you and the Employer relating to the resolution of any disciplinary action taken against you by the Employer, including the "last-chance" provision provided by the Employer in or around December 2014.
3. Any grievance filed by or on behalf of you against the Employer, and any documents you provided to the Union or the Employer relating to the grievance(s).
4. Documents describing, constituting or memorializing the settlement of any grievance filed by or on behalf of you against the Employer, including specifically any documents relating to the settlement of your termination grievance and any compensation you received in relation to that settlement.
5. For the period covered by this subpoena, documents describing, constituting or memorializing all communications between you and the Union.
6. For the period covered by this subpoena, all text messages, emails and other communications between you and Frank Molina, or between you and another Union official.
7. For the period covered by this subpoena, documents describing, constituting or memorializing all communications between you and Jarrod Lehman.
8. For the period covered by this subpoena, documents describing, constituting or memorializing all communications between you and the Employer relating to your work performance, conduct, discipline or termination.
9. Documents describing, constituting or memorializing all communications between you and any other person relating to the automobile collision captured on video by the Employer on December 26, 2013, including specifically any email, Facebook message, post or comment, or other electronic communication sent by or received by you which attached, embedded or otherwise disseminated video footage of the collision.

Case 14-CB-133028

B-1-LOU4ZL

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

(Check method used.)

- ☐ by person
- ☐ by certified mail
- ☐ by registered mail
- ☐ by telegraph
- ☐ by leaving copy at principal office or place of business at

on the named person on

(Month, day, and year)

(Name of person making service)

(Official title, if any)

CERTIFICATION OF SERVICE

I certify that named person was in attendance as a witness at

on

(Month, day or days, and year)

(Name of person certifying)

(Official title)

FEB/04/2015/WED 10:13 AM

FAX No.

P. 007